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IN THE

Supreme Court of the United States

October Term, 1952

No. 497

SEATRAIN LINES, INC.,

Petitioner,

vs.

PENNSYLVANIA RAILROAD COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, SOUTHERN RAILWAY COMPANY, BALTIMORE AND OHIO RAILROAD COMPANY, SEABOARD AIR LINE RAILROAD COMPANY, ERIE RAILROAD COMPANY, ASSOCIATION OF AMERICAN RAILROADS,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Seatrain Lines, Inc.

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I. As to the Public Interest

In their brief in opposition to the petition respondents urge, first, that the present case does not involve the public interest, referring to it as "essentially a private controversy" (Resp. Br., p. 6). That the public interest is involved, because of the immediate and urgent public need which has been found to exist for petitioner's Savannah service, is, we believe, so clearly demonstrated in the brief in support of the application for certiorari, as to call for no further demonstration here.

Beyond this, however, respondents urge that petitioner's contention that their activities did materially restrict and hamper petitioner's service, instituted to meet that need, is not supported by the facts; indeed, they suggest that petitioner's application in the District Court for preliminary injunction (which involved the same contention) was denied for "failure of proof" (Resp. Br., p. 7). The decision below did not, however, go on any such ground. The District Judge denied the application for preliminary injunction, as he dismissed the case as a whole, solely upon jurisdictional grounds.

In this same context respondents suggest that the application for certiorari embodies an attempt on petitioner's part to obtain interlocutory relief from this Court and intimates that such relief might more appropriately be sought from the District Court or from the Court of Appeals (Resp. Br., p. 7). On the contrary, petitioner seeks by this application to have the jurisdictional issue created by the District Court's decision promptly resolved, because until it has been resolved petitioner will have no tribunal to which it can turn for any effective relief, either interlocutory or final. The District Court did not deny interlocutory relief because it felt that it was not shown to be necessary to prevent grave and irreparable harm to petitioner. It denied that relief solely upon the ground that it lacked power to give it in the present case.

Petitioner is not asking this Court for either interlocutory or final injunction against any of respondents' acts. It seeks (in its Question Number 1) only a decision of the question whether the District Court has power to enter such an injunction.

2. As to Question Number 1

Respondents suggest that the District Court's decision as to the Commission's jurisdiction over car interchange is not really inconsistent with the prior decisions of the Commission on this issue and intimate, without expressly stating, that the Commission's prior decisions, that its jurisdiction to require car interchange with a water carrier was limited to cars owned by railroads which participate in or maintain through routes with such water-carrier, were perhaps only *dicta* (Resp. Br., p. 8).

The fact is that such holdings by the Commission were not mere *dicta*. For more than nine years, petitioner sought relief from the Commission against these respondent railroads and others with respect to car interchange, not limited to cars owned by railroads which participate in or maintain through routes with petitioner, but predicated upon interchange of all railroad owned cars. The Commission denied relief with respect to all cars owned by railroads which do not participate in or maintain through routes with petitioner on the ground that its jurisdiction was limited to cars owned by railroads which participate in or maintain through routes with petitioner, and its order was reviewed and upheld in the courts.

In view of this situation, we are unable to understand how respondents can say to this Court, as they do on page 5 of their brief, that petitioner asked the District Court to decide issues under the Interstate Commerce Act which had never been submitted to the Commission, or can complain that petitioner is seeking from the District Court relief which the Commission had denied, when the Commission's denial was solely upon the ground that the Interstate Commerce Act did not give it jurisdiction of the subject matter.

Respondents also urge that the issues sought to be raised by petitioner are not in fact raised by petitioner's suit under the Sherman Act, pointing to the fact that all of the respondent railroads are or could be made parties to through routes with Seatrain and, therefore, are subject to Commission jurisdiction as regards the interchange of their cars (Resp. Br., p. 8).

Respondents carefully omit mention of the respondent Association in this connection, however. The Association, not being a carrier, is not, and could not conceivably be made a party to any through route with petitioner. The contention thus evidences a complete misconception of the reasons why this suit was brought against these respondent railroads and this respondent Association. The complaint alleges that respondent railroads have originated and maintained a conspiracy to prevent Seatrain's development and growth as their competitor in interstate commerce; that in aid of this conspiracy they have, through their instrumentality the respondent Association, brought about and maintained in effect the concerted exclusion of petitioner from unrestricted access to the cars of *all* railroads, including many which are not, and could not possibly be made, parties to through routes with Seatrain.

Thus, it is not correct to state, as respondents do, that the relief which Seatrain seeks against respondent railroads in this case is the same relief which the Commission has held it has power to grant.

Respondents' reliance upon this Court's decision in *Far East Conference* v. *U. S.*, 342 U. S. 570, and on the decision of the Court of Appeals in *S. S. W., Inc.* v. *Air Transport Association of America*, 191 F. 2d 658 (Resp. Br., p. 6), assumes that the District Court's decision as to the Commission's jurisdiction is correct. It also assumes (although the point was not involved in either of the above cases)

that the District Court was free to disregard the repeated decisions of the Commission as to its own jurisdiction, in proceedings to which these respondents and petitioner were parties, and that respondents were free to open up again in this anti-trust case this issue which the Commission had decided.

The first question presented in the petition for certiorari is thus squarely presented in the case at bar, and has not previously been decided by this Court.

3. As to Question Number 2

With respect to the question of damages, respondents suggest (Resp. Br., p. 9) that the District Court in effect held (on the basis of the complaint alone) that petitioner had suffered no injury other than that which resulted directly and immediately from the individual acts of individual railroads respecting car interchange, as to which the Court held the Commission had plenary jurisdiction. The complaint does not so limit petitioner's claim for damages.

To be sure, the District Court had before it in support of petitioner's application for preliminary injunction much proof as to the injury currently being suffered by petitioner as a result of respondents' acts in excluding it from the interchange and use of cars—to which acts the prayer for injunction was limited. But this did not justify the assumption that no other proof as to damages not directed to the limited objective of the injunctive relief sought, could or would be offered upon a trial of the case. Yet, unless the District Court made precisely this assumption, and thus, in effect, prejudged the case, it is impossible to avoid the conclusion that, in the apt phrase of respondents, the District Court did "innovate a doctrine that the Com-

mission had an associative jurisdiction which extended its statutory jurisdiction to all allied and subsidiary complaints" (Resp. Br., p. 9, f. n. 10).

There is nothing in either *U. S. Nav. Co.* v. *Cunard S. S. Co.*, 284 U. S. 474, or in *Terminal Warehouse* v. *Penn. R. R. Co.*, 297 U. S. 500, which in any way militates against this conclusion The former of these cases sought only equitable relief against unfair competitive practice. No damages were, or could be, sought in view of the separation between law and equity then still subsisting. The latter case was decided after trial upon the basis of a record which contained no proof of damages not directly and immediately resulting from violations of the Interstate Commerce Act. We are aware of no case other than the present one in which a complaint seeking damages for injury to the plaintiff's business resulting from a conspiracy to monopolize interstate commerce carried out in part by means violative of the Interstate Commerce Act* and in part by other means, has been dismissed upon the complaint alone and without the reception of evidence, on the ground on which the District Court relied.

The second question presented in the petition for certiorari is likewise thus squarely presented in the case at bar, and has not previously been decided by this Court.

4. As to Proceedings pending before the Commission

As respondents point out (Resp. Br., p. 6), and as petitioner itself brought to the attention of the Court, there is now pending before the Interstate Commerce Commission a proceeding for declaratory order filed by petitioner in which the Commission is asked to define its own juris-

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* Seatrain is not seeking in this anti-trust proceeding damages for violations of the Interstate Commerce Act.

diction. There is also pending before the Commission the complaint filed by certain of the respondent railroads in March 1952. Petitioner Seatrain appended to its petition for certiorari herein its petition for a declaratory order. That petition for declaratory order, moreover, includes as an exhibit the aforesaid complaint filed in March 1952 by certain of the respondents and points out what is really involved therein. Without entering upon an analysis of these interstate commerce proceedings, which involve matters of some complexity, we respectfully refer the Court to said Appendix B to the petition for certiorari, and to respondent Railroads' brief, to respondent Association's brief, and to petitioner's reply brief in said proceedings for declaratory order, which for the sake of completeness, are annexed hereto as Appendices C, D and E, respectively.

We respectfully submit that comparison of the various and conflicting positions taken by respondents in these proceedings and before this Court (as shown in detail in Appendix E, especially Section II, Subd. A and Section III, Subd. D) as to the extent of the Commission's jurisdiction, and the effect of this Court's holding in *U. S.* v. *Pennsylvania R. Co.*, 323 U. S. 612 in that regard, cogently demonstrates the need of the authoritative resolution of that question which only this Court can give.

Respectfully submitted,

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